RE SYED HASSAN ALJEFFREE

[O.C.J. (Azmi C.J. (Malaya)) September 10, 1966]

[K.L. — Petition for admission No. 20 of 1966]

Advocates and Solicitors — Admission — Reading in Chambers — Notice — Shortening of — Experience in Judicial and Legal Service — Special ground — Period of reading in chambers coinciding with attendance at post graduate course — Advocates & Solicitors Ordinance, 1947, 5(5).

In an application under section 5(5) of the Advocates and Solicitors Ordinance, 1947, to shorten the periods of notice and reading in chambers, the petitioner, a barrister, applied to the court to consider as special ground his experience in the Government legal and judicial service from 1957 to 1966. The petition was opposed by the Bar Council on the ground that part of his period of reading in chambers had coincided with the attendance at the post graduate course organised by the University of Malaya.

Held: (1) the objection that the period or part of the period that the petitioner was reading in chambers coincided with the period of attendance at the post graduate course failed, as the petitioner's attendance at the course was outside the usual office hours;

(2) on the question of shortening the period of reading in chambers, the paramount consideration is whether the petitioner had acquired such knowledge and experience of the laws and practice as will ordinarily be obtained by attending the office of a practising advocate and solicitor for six months. The petitioner's 8 to 10 years experience in the legal service is sufficient consideration to allow the shortening of the period of reading in chambers;

(3) as the time for posting of notice had also been sufficient to enable anybody who knew anything against the petitioner's character and suitability to come forward and speak, the petition was allowed.

PETITION FOR ADMISSION.

Morris Edgar for the petitioner.

K. A. Menon for the Bar Council, Malaya.

Ronald Yeo for the Bar Committee, Selangor.

Zaitoon binte Othman for the Attorney-General, Malaysia.

Azmi C.J. (Malaya): This is a petition for an order that the period during which the petitioner is required to attend and receive instruction in an office or to read in chambers as required by section 5(3) of the Advocates and Solicitors Ordinance, 1947, and also the period during which the notice referred to in sub-section (2) of the same section is required to be posted, be shortened and that he be forthwith admitted and enrolled as an advocate and solicitor of the High Court.

Both the Attorney-General and the Bar Committee of the State of Selangor offer no objection to the petition.

The Bar Council of Malaya, however, objects to the prayer for the shortening of the periods on the ground that the application is premature and that the documents filed in support are irregular.

It is not disputed that the petitioner is a barrister of England, having been called to the Bar on 26th November 1957 and subsequent to that he joined the judicial and legal service of the Federation of Malaya and during that period served as a magistrate, president of the sessions court, deputy registrar of the High Court and federal counsel until he retired in 1966. Previous to that period he also served as a magistrate.

On 20th April 1966, he joined the firm of Lovelace & Hastings and has been attending as a pupil since then.

He had from 14th March 1966 to 4th June 1966 attended and satisfactorily completed a post graduate practical course of instructions organised by the University of Malaya within the meaning of the proviso to section 5(3) of the Advocate and Solicitors Ordinance, 1947 as amended by the Ordinance of 1961. That is equivalent to six months' course of instructions as a pupil in the chambers of an advocate and solicitor.

The petitioner now prays that the further period of six months of instruction be reduced to three months under sub-section (5) of the same section on the ground that he had previous to his retirement from the government service been holding the various legal and judicial posts as I have previously enumerated.

Sub-section (5) of the said section gives discretion to the court to shorten or dispense with the period during which a petitioner is required to attend and receive instructions in an office or to read in chambers, and may if it thinks fit admit and enrol the petitioner at any time.

On both questions of shortening the period of posting of notice and of reading in chambers, public interest must be considered paramount. In the first case, the court has to consider whether sufficient public notice has been given to this applicant's intention to apply for admission to enable anyone who knows anything against his character and suitability to come forward and speak. And in reference to the shortening of the period of reading in chambers, the court must consider whether the petitioner had acquired such knowledge and experience of the laws and practice as will ordinarily be obtained by attending the office of a practising advocate and solicitor for the prescribed period, which in this case is six months.

Mr. Menon's main objection as I understood him was that the period or part of the period that the petitioner was reading in chambers and the period he was attending the university course coincided. On this ground it is not disputed that the petitioner's attendance at the course was outside the usual office hours. On that ground alone I think the objection must fail. But as I have said before, the question that the court must consider is whether the petitioner in the

interest of the public had acquired sufficient knowledge and experience having regard to his previous experience in the government service. For myself it is difficult to appreciate that say 8 to 10 years' experience in the judicial and legal service of the government, could not be regarded as equivalent to three months' experience in the office of a legal practitioner. To regard otherwise in my view, is to have a very poor view of the standard of knowledge and experience required of a legal or judicial officer.

There is another small objection from Mr. Menon. On the same day I heard this petition the petitioner filed a further affidavit enclosing a certified copy of the certificate from the university certifying that the petitioner had attended a course of instruction. The affidavit explained why a certified copy was filed so late. Since the petitioner had already affirmed that he had attended the course in his principal affidavit and that this subsequent affidavit is merely a confirmation to the fact that he had attended the course I am afraid this objection must also fail.

I would therefore make the order prayed in paragraph (1) of the motion. I would also say that the time for posting has also been sufficient to enable anybody who knows anything against petitioner's character and suitability to come forward and speak. I would therefore, also make the order prayed for in paragraph (2). I would therefore make the order prayed in paragraph (3) in the petition that the petitioner may forthwith be admitted and enrolled as an advocate and solicitor of the High Court of Malaya.

Petition granted.

SHANMUGANATHAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi C.J. (Malaya)) October 15, 1966]

[K.L. — Selangor Criminal Appeal No. 60 of 1966]

Criminal Law and Procedure — Sentence — Excessive — Criminal Procedure Code (Cap. 6), s. 173A.

Penal Code, s. 408 — Criminal breach of trust — First offender — Sentence.

The appellant was convicted of having committed criminal breach of trust of $150 cash, an offence punishable under section 408 of the Penal Code and sentenced to 4 months imprisonment. He was 24 years old and had no previous convictions. From the facts it appeared that it was not probable that a series of breaches of trust could have been committed by the appellant without the knowledge of the other employees. After the breaches of trust the appellant's father had paid a sum of $2,500 to make good the amount alleged to have been misappropriated by the appellant. He appealed against the sentence.

Held: in view of the circumstances of the case, particularly the appellant's age and clean record, the sentence of imprisonment was not an appropriate one. Accordingly, he should be released on a bond under section 173A of the Criminal Procedure Code to be of good behaviour for a period of one year with one surety in the sum of $1,000.

CRIMINAL APPEAL.

Dato' Athi Nahappan for the appellant.

Ajaib Singh & Hashim bin Majid (Deputy Public Prosecutors) for the respondent.

Azmi C.J. (Malaya): The appellant was convicted of having committed criminal breach of trust of $150 cash whilst in the employment of Borneo Motors (M) Ltd. Kuala Lumpur, an offence punishable under section 408 of the Penal Code and was sentenced by the president of the sessions court to four month's imprisonment.

Originally he appealed against both conviction and sentence but ultimately he withdrew the the appeal against conviction and asked me to consider only the question of sentence.

The appellant is a young man of 24 years of age and has been in the employment of his employer since December 1959.

It was part of his duty as a receptionist to receive orders for repairs of motor vehicles from the customers of the company and then after recording the request for repairs in the cards to give instructions to the other employees of the company what repairs would be required.

When any such repairs are completed it would be the duty of the appellant to see that the amount claimed for the work would be collected and paid to the cashier for which the cashier would give a receipt to be handed to the customer.

Although the subject of the charge is only in reference to a single transaction it would appear that there are many other transactions involving various sums of money received from various customers for several months in 1963.

In my view having regard to the facts it would not be probable that the series of breaches of trust could have been committed by the appellant without the knowledge of the other employees.

It is also shown that the father of the appellant had, having heard of these breaches of trust by the appellant, paid back to the company a sum amounting to $2,500 to pay towards the amount alleged to have been misappropriated by the appellant.

In view of the above circumstances, particularly the age of the appellant and his clean record, I feel that the sentence of imprisonment would not be an appropriate one. I therefore order that the appellant be released on his signing a bond under section 173A of the Criminal Procedure Code to be of good behaviour for a period of one year with one surety in the sum of $1,000.

Order accordingly.

Solicitors: *Athinahappan & Co.*